GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

APM&HS – S.Vasantha Rao, formerly Ophthalmic Assistant, Primary Health Centre, Kinthali, presently working as PMOO, PHC, Patharlapalli, Srikakulam District - Negligence in conducting cataract operations resulting in loss of eyesight to (15) patients – Article of Charges framed — Written Statement of Defense received - Enquiry Conducted — Enquiry Report Received -- Imposed the penalty of two annual grade increments with cumulative effect — Filed W.P No.16564/2014 — Judgment issued — Filed SLP in the Hon'ble Supreme Court by the Government — SLP dismissed — Cancelling of the penalty Orders and releasing of all eligible benefits - Orders - Issued.

HEALTH MEDICAL AND FAMILY WELFARE (VC-II-2) DEPARTMENT

G.O.Rt.No.494. **Dated:02.09.2021.**

Read the following:-

1. G.O.Rt.No.931, H.M.&FW(VC.II) Dept, Dt.1-11-2004
2. G.O.Rt.No.1159,H.M.&FW(VCII) Dept, Dt.22-8-2007
3. Govt.Memo.No.25287/VC.II(2)/2003-13,Dt.26-6-2007
4. Enquiry Report received from the Supdt, Sarojini Devi Eye Hospital in Rc.No.SDEH/Peshi/1476/2008, dt.30-4-2008
5. Govt.Memo.No.25287/V.C.II(2)/2003-27,Dt.2-8-2010
6. Explanation of S.Vasantha Rao, Paramedical Ophthalmic Officer, PHC, Patharlapalli, Srikakulam Dist Dt.3-9-2010
7. Govt.Lr.No.25287/VC.II.2/2003-25, Dt.19-5-2010 & 14-10-2010
8. From the Prl. Secy., APPSC, Lr.No.737/RT-I/3/2010, Dt.22-11 2010
9. G.O.Rt.No.725, HM&FW(VC.II.2) Department, Dated: 17-03-2011.
10. Orders of the A.P Administrative Tribunal in O.A No.7133/2011 dt.25/10/2013
11. Orders of Hon'ble High Court of A.P. dated:04.02.2020 in W.P No.16564 of 2014.
12. Lr.No.HM&FW- 21023/11/2020-VC.II, dt.16/04/2021 to the Advocate on Records, New Delhi.
13. Orders of Hon'ble Supreme Court in SLP No. 10998/2021, dt.30.07.2021.

O R D E R:-

In the reference 1st and 2nd read above, Article of Charges are framed against S.Vasanth Rao, formerly Ophthalmic Assistant, Primary Health Centre, Kinthali, presently working as PMOO, PHC, Patharlapalli, Srikakulam District on the allegations of negligence in conducting cataract operations in the eye camps in Polaki and Tankala Duggivalasa Villages, Srikakulam District, under the National Programme for Control of Blindness (NPCB), resulting in loss of eyesight to (15) patients in October, 2003. The Charged Officer have submitted his Written Statement of Defense to the Article of Charges framed.

2. After examination of the Written Statement of Defense to the articles of charge, which were found unsatisfactory, the Government appointed the Superintendent of Sarojini Devi Eye Hospital, Hyderabad as Enquiry Officer to conduct enquiry into the charges framed against Sri S.Vasantha Rao vide reference 3rd read above. The Enquiry report was submitted by the Enquiry Officer in the reference 4th read above. Government after examination of the report of the Enquiry Officer have observed that, Sri S.Vasantha Rao was responsible losing eye sight for fifteen persons due to

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negligence, poor-post-operative care and failure to maintain sterile operating conditions. As such the Government under rule 21 (2) of Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules 1991, arrived at a provisional decision to impose the major punishment against Sri S.Vasantha Rao, Ophthalmic Assistant and accordingly issued a show cause notice to him duly indicating the factors for seeking his explanation as to why suitable penalty should not be imposed on him vide reference 5th read above. The charged Officer has submitted his explanation to the show cause notice vide reference 6th read above.

3. The Government after examination of the explanation of Sri S.Vasantha Rao, formerly Ophthalmic Assistant have decided to impose a major penalty of withholding of two annual grade increments with cumulative effect on Sri S.Vasantha Rao, formerly Ophthalmic Assistant, Srikakulam District, under clause (vi) of rule 9 of Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 after consulting the Andhra Pradesh Public Service Commission vide reference 8th read above, the orders were issued accordingly vide reference9th read above.

4. Aggrieved by the said punishment orders, the individual Sri S.Vasantha Rao, Ophthalmic Assistant have filed O.A No.7133/2011 in A.P Administrative Tribunal and Hon'ble Tribunal have issued orders dt.25/10/2013, as follows:

> " In view of the above facts and circumstances obtaining in the case, we are of the view that the impugned G.O.Rt.No.725 dt.17/03/2011 is not held to be bad in law. The point is accordingly answered.
> For the reasons stated above under point No.1, the relief sought by the applicant does not deserve to be granted.
> Accordingly, the O.A is dismissed , No Costs".

5. Further the individual S.Vasantha Rao has filed the WP NO.16564 of 2014 in the High Court of AP, and the necessary counter was submitted by the Government in the W.P.

6. The Hon'ble High Court in the order in W.P NO.16564 of 2019 have ordered that,

> " In this context it may be appropriate to refer to the proviso to Rule 21(5) of the CCA as mentioned supra. It is very much clear from a reading of the said proviso that before taking further action in the matter, pursuant to the show cause of disagreement and after submission of the necessary explanation by the delinquent, the matter should be referred to the APPSC for advise and the said advice shall be taken into consideration before making an order imposing penalty on the Government servant. Except referring to the earlier show cause notice, dt.30.07.2009, and the opinion expressed by the Secretary, APPSC on 18/06/2010, the impugned order of punishment does not refer to any sort of information as to the correspondence with the Commission or consultation as per the above said proviso. In the considered opinion of this Court, the said aspect is fatal to the case of the Department and in the absence of such consultation, the further action, pursuant to the letter, dated.18/06/2010, cannot be sustained in the eye of law.
> For the aforesaid reasons, the writ Petition is allowed, setting aside the orders, dated 25/10/2013 passed by the APAT Hyderabad in O.A.NO.7133 of 2011 and consequently the order passed by the State Government, vide G.O.Rt.NO.725, HM&FW(VC.II.2) Department dt.17/03/2011 is also set aside. However it is open for

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the respondent authorities to take further steps if they are so advised pursuant to the letter of the APPSC, dt.18/06/2010 and to finalize the same strictly in accordance with law.
As a sequel miscellaneous petitions pending, if any in the Writ Petition shall stand closed".

7. The Government after careful examination of the above order issued in W.P No.16564 of 2014 in consultation with Law Department filed S.L.P. 10998/2021 in the Hon'ble Supreme Court vide ref.12th read above, against the orders of Hon'ble High Court, in Writ Petition No.16564 of 2014, dt. 04.02.2020.

8. The Hon'ble Supreme Court in SLP No.10998/2021, dt.30.07.2021 have issued orders as follows:

"We are not inclined to interfere with the impugned judgment passed by the High Court. Special Leave Petition is dismissed. Pending applications, if any, also stand disposed of."

9. In view of the circumstances explained above, the Government have decided to cancel the orders issued vide ref. 9th read above, and to release all the eligible benefits to S.Vasantha Rao, formerly Ophthalmic Assistant, Primary Health Centre, Kinthali, presently working as PMOO, PHC, Patharlapalli, Srikakulam district.

10. Accordingly, the Government hereby cancelled the orders issued in the ref. 9th read above, and ordered to release all the eligible benefits to Sri. S.Vasantha Rao, formerly Ophthalmic Assistant, Primary Health Centre, Kinthali, presently working as PMOO, PHC, Patharlapalli, Srikakulam district.

11. The Director of Public Health & Family Welfare, Andhra Pradesh, Vijayawada shall take necessary further action accordingly.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

MUDDADA RAVI CHANDRA
PRINCIPAL SECRETARY TO GOVERNMENT

To
Sri. S.Vasantha Rao, formerly Ophthalmic Assistant, Primary Health Centre, Kinthali, presently working as PMOO, PHC, Patharlapalli, Srikakulam district through the Director of Public Health & Family welfare, A.P. Vijayawada.
The Director of Public Health & Family welfare, A.P. Vijayawada.
Copy to
The Secretary, AP Public Service Commission, M.G.Road, Vijayawada.
The OSD to Hon'ble Dy.Chief Minister (HFW&ME), Secretariat.
The PS to Principal Secretary, HM&FW Department, Secretariat.
The Director of Treasuries and Accounts, A.P, Anjaneya Towers, Ibrahimpatnam, Krishna District.
The District Treasury Officer, Srikakulam, Srikakulam district.
The District Medical & Health Officer Srikakulam, Srikakulam district.
The RDM&HS, Visakhapatnam, Visakhapatnam district
The Medical Officer, PHC, Patharlapalli, Srikakulam district
SF/SC.

// FORWARDED :: BY ORDER //

SECTION OFFICER